EDWARD LORE

IBLA 86-524 Decided May 21, 1987

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring the Firebird Nos. 1 through 4 mining claims, null and void ab initio. UMC 283512 through UMC 283515.

Reversed.

1. Mineral Lands: Mineral Reservation -- Mining Claims: Lands Subject to -- Patents of Public Lands: Reservations

As provided by 43 CFR 3811.2-9, lands patented with mineral reservations to the United States under the Taylor Grazing Act, 43 U.S.C. § 315g (1970), are subject to appropriation under the mining or mineral leasing laws for the reserved minerals.

APPEARANCES: Edward Lore, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Edward Lore has appealed from the November 29, 1985, decision of the Utah State Office, Bureau of Land Management (BLM), declaring the Firebird Nos. 1 through 4 mining claims, UMC 283512 through UMC 283515, null and void ab initio. Appellant asserts that the claims were originally located in 1965, but were declared abandoned and void by BLM in 1983 for failure to file evidence of the 1979 assessment work required pursuant to 43 U.S.C. § 1744 (1982). Appellant does not deny that the decision was sent to his last address of record, but states that it was returned undelivered because he had moved. Nevertheless, appellant's failure to file a timely appeal from that decision allowed the decision to become a final determination of his rights to the claims. See 43 CFR 4.411(c); Virgil V. Peterson, 66 IBLA 156 (1982).

On April 25, 1985, appellant filed a notice of location for these claims, stating that they were located on March 23, 1985. In its decision dated November 29, 1985, BLM declared these claims null and void, stating that the land had been patented to the State of Utah on February 1, 1968, and although the minerals were reserved to the United States, "currently no regulations exist for location under the mining laws." If the deposits on appellant's claims were no longer open to location after the lands were patented, we would have to affirm BLM's decision. After the claims became abandoned and void under 43 CFR 1744 (1982), no subsequent location could relate back

with the effect of reviving them. See United States v. Locke, 471 U.S. 84, 90-91 (1985); Florian L. Glineski, 87 IBLA 266 (1985).

[1] However, BLM erred in concluding that there were no regulations for location of these claims. The patent that included the section on which these claims are located was issued pursuant to 43 U.S.C. § 315g (1964), repealed, P.L. 94-579, § 705(a), 90 Stat. 2792 (1976), and reserved all minerals to the United States. Under 43 CFR 3811.2-9, reserved minerals in lands patented with a mineral reservation under this provision are subject to appropriation under the mining law. 1/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of Interior, 43 CFR 4.1, the decision appealed from is reversed.

Franklin D. Arness
Administrative Judge

We concur:

John H. Kelly,
Administrative Judge

R. W. Mullen
Administrative Judge

1/ Although Departmental regulation 43 CFR 3811.2-9 is captioned "Lands Under Color of Title Act," it also refers to lands patented under "the Taylor Grazing Act, (43 U.S.C. 415g)." (Emphasis added; the underscored numeral is a typographical error.) Title 43 of the United States Code contains no section 415g; that portion of the code refers to reclamation, not the Taylor Grazing Act. The text of the regulation should refer to 43 U.S.C. § 315g (1970), which was the correct citation for the Taylor Grazing Act's land patent provision.